

Utah State Charter School Board Meeting
Minutes
December 16, 2004
Room 156, Utah State Office of Education

Members present: Brian Allen, Barbara Killpack, Eric Smith, Anne Peterson, David Moss

Members excused: Scott Smith, Sonia Zisumbo

Staff excused: Jo Schmitt

Others present: Kathy Akin, Ray Timothy, Carol Lear, John Broberg, David Purinton, Valerie Throckmorton, Shalena Way, Mark Madsen, Matt Throckmorton, Glenn Way, Eldon Budge, Jim Peterson, David Scholes, Kim Brown, Tawnee Wood, Katherin Molan, Deborah Deem, Craig Bergeson, Kathleen Thornburg, Richard Evans, William Evans, Steve Kroes, Mark Allen, Carolyn Sharette, Vic Arnold, Janene Bowen, Tiffany Erickson, Amy Stewart

1. Call to Order

The meeting was called to order by Brian Allen, Chairman, Utah State Charter School Board, at 10:05 a.m.

2. Approval of Minutes

A motion was made by Member David Moss and seconded by Chairman Allen to approve the minutes from the November 18, 2005 meeting. The motion carried unanimously.

3. Ratification of the Appointment of John Broberg as the Director of Charter Schools

Chairman Allen explained the statutory process for hiring and approving the Director of Charter Schools. He said that the State School Superintendent is responsible for hiring/appointing the Director and that the State Charter School Board is responsible to ratify the appointment.

A motion was made by Chairman Allen and seconded by Member Eric Smith to ratify John Broberg as the Director of Charter Schools. The motion carried unanimously.

Members briefly discussed the process of selecting a Director of Charter Schools and said that they felt it was an open and competitive process. Members expressed support of the choice of John Broberg. Chairman Allen welcomed John Broberg and asked him to address the State Charter School Board.

Mr. Broberg said that he was excited for the opportunity and felt that he could be a support and strength to the State Charter School Board in its responsibilities.

There was a brief discussion regarding offices. Ray Timothy, Associate Superintendent, Utah State Office of Education, indicated that the USOE had identified space on the second floor where there may also be room for growth.

John Broberg will start his new position on January 3, 2005.

4. American Achievement Academy - Amendment to Approved Charter

Chairman Allen provided background information on the amendment to American Achievement Academy's Charter to add 10-12 grades and requested a representative from American Achievement Academy present some information to the State Charter School Board.

David Purinton from American Achievement Academy briefly described the concerns that the State Charter School Board originally had with the amendment to the Charter. The State Charter School Board had requested detailed plans regarding accreditation, additional clarification on sports and extracurricular activities, and enrollment estimates for grades 10-12 with information detailing plans for any shortfall in enrollment. Mr. Purinton said that those concerns are now addressed in the document provided to the State Charter School Board.

Accreditation: Mr. Purinton said that American Achievement Academy did not originally have a clear understanding of the accreditation process and requirements. After meeting with and receiving clarification from Georgia Loutensock, Accreditation Specialist, Utah State Office of Education, he stated that American Achievement Academy now has a clear understanding of the accreditation process and requirements. There was further discussion about the importance of preparation and accreditation and Mr. Purinton said that Georgia Loutensock made it quite clear that in the first year the school should be in compliance as a candidate school.

Sports and Extracurricular Activities: Mr. Purinton indicated that at the November 30, 2004 State Charter School Board meeting, he was under some significant misinformation regarding sports and extracurricular activities and Nebo District having to accept American Achievement Academy's students. In preparing the document, he had further discussion with Evan Excell, Executive Director, Utah High School Activities Association. State Charter School Board members and Mr. Purinton discussed the conditions upon which charter school students may participate in sports and extracurricular activities through a school district. Carol Lear clarified three possibilities: 1) the charter school students do not participate at all in Utah High School Activities Association athletics; 2) the charter school may make a mutual agreement with the school in which the charter school is located to allow the charter school students to participate; or 3) under the Utah High School Activities Association co-op rule, the charter school student would have to transfer back to his resident school where his legal guardian lives, and be enrolled as a full time student and attend all classes for the length of the sport or extracurricular activity and then he may transfer back to the charter school.

Mr. Purinton said that the school will be working with Nebo School District and the Utah High School Activities Association, but he believes that in principle, American Achievement Academy may have an agreement with Nebo School District where students from American Achievement Academy may participate in sports without transferring their enrollment. Carol Lear indicated that a high school must have a clear understanding of some of the implications that may include a change in classification or other eligibility issues for the athletes in the traditional school(s). Mr. Purinton said that American Achievement Academy intends to submit an application for membership to Utah High School Activities Association as soon as possible.

Enrollment estimates and plans for any shortfall in enrollment: Mr. Purinton provided an explanation of the plans for any shortfall in school enrollment as requested by the State Charter School Board. (See American Achievement Academy document dated December 13, 2004). Mr. Broberg asked Mr. Purinton about American Achievement Academy's curriculum base for upper grades. Mr. Purinton said that it would be general high school curriculum.

Mr. Broberg asked if there were any specific college preparatory curriculum. Mr. Purinton indicated that the application is detailed on the school's ideas for the twelfth grade and that American Achievement Academy wants to make sure it has concurrent enrollment options and other tracks for mechanics and technology.

Mr. Broberg asked about transportation. Mr. Purinton said students will be responsible for transportation to off-campus sites or students can participate through video before school at American Achievement Academy.

Jim Peterson from American Achievement Academy said that the school is trying to create a relationship with Mountainland Applied Technology College and also with Nebo School District.

A motion was made by Member Eric Smith and seconded by Member David Moss to approve American Achievement Academy's request to add grades 10-12. The motion carried unanimously.

5. Conversion Approvals - Thomas Edison Charter School

Chairman Allen indicated that there are two schools requesting charter school conversions, and requested that the representative from Thomas Edison explain the conversion.

Eldon Budge said that the conversion document should answer questions about transferring from the State Board of Education to the State Charter School Board and said that he would respond to questions from State Charter School Board members.

Member Barbara Killpack and Mr. Broberg had questions concerning the remediation programs that Thomas Edison has outlined for its students. Mr. Budge said that students are tutored by a trained specialist on a short or long term basis, usually before or after school, depending on the individual need of the student. He also said that parents have been willing to be involved.

Member Anne Peterson said that she knew that Thomas Edison met AYP (under No Child Left Behind) and asked Mr. Budge if the school is meeting other goals, such as CRT results. Mr. Budge indicated that the school has a new set of goals and that it may take them a while to get there but they believe that locking in high goals is something they should shoot for.

Chairman Allen said that the amendment to the charter is asking for the addition of eighth grade and asked Mr. Budge to tell the State Charter School Board about this plan. Mr. Budge indicated that Thomas Edison wants to make sure that continuity exists for current seventh graders. The school currently has 28-29 seventh graders and because of the current structures in the existing schools in Cache Valley, those seventh grade students who are presently attending Thomas Edison would then need to go to a middle school for a year for eighth grade, and then have to go to another school for high school. The school is in the process of putting together a curriculum that will be a continuation meeting all the state requirements. The Thomas Edison Charter was originally approved for K-8.

A motion was made by Member Anne Peterson and seconded by Member David Moss to approve the conversion of Thomas Edison Charter School. The motion carried unanimously.

Conversion Approvals - Ogden Preparatory Academy

Chairman Allen welcomed Deborah Deem, parent representative on the Ogden Preparatory Academy Board of Directors to make the presentation.

Ms. Deem said that the school was originally approved for a K-8 school but the school is currently running K-6. The present charter with the district only allows the school to grow by 52 per year. In order to provide an adequate program for the school's seventh and eighth graders, the school needs more than 52 students in the seventh and eighth grades. She said that Ogden Preparatory Academy would also need a new facility because it is currently running out of capacity in its current facility. Ogden Preparatory Academy is therefore asking to convert to the State Charter School Board and to be

able go to K-8 for which it was originally approved.

Member Anne Peterson asked Ms. Deem how the school would grow from 275 to 650? Ms. Deem indicated that right now the school's fourth, fifth and sixth grades have only one section and so there are 275. There are two sections in everything but fourth, fifth and sixth grades. Next year the school wants to have three sections in fifth, sixth, seventh, and eighth grades and two sections in K-4.

Member Eric Smith asked Ms. Deem if three full classes of eighth graders coming for just one year is realistic. Ms. Deem said that there are currently over 200 students on the list of pre-registered students who are not affiliated with the school. There are also over 25 students who are siblings who will be coming next year and 25 fifth graders and 25 sixth graders currently, and the school has not advertised. Ms. Deem said the middle schools in Ogden School District are all on the failing list. She said that they are improving but there is not a good alternative for middle school students in the area and there is not another middle charter school in the area.

Member Barbara Killpack asked Ms. Deem about a new building. Ms. Deem said that the school has had a surplus every year and has an option to purchase the land that the school plans to build on. The new building is adjacent to the one the school is currently in where the fifth through eighth grade will be and the K-4 will continue in the current building.

Member Barbara Killpack asked about the Ogden Preparatory Academy's prospective building and its' financing. Ms. Deem said that Academica West is the management company and it is presently facilitating Ogden Preparatory Academy.

Member Anne Peterson asked Ms. Deem about the school's dual language program. Kathleen Thornburg, Principal of Ogden Preparatory Academy, said that fifty percent of Ogden Preparatory Academy's teachers are international and bilingual and Ogden Preparatory Academy depended on those teachers to be able to present the curriculum to the students.

There was further discussion of Ogden Preparatory Academy's dual language program.

Member Anne Peterson had questions concerning the human resources performed by Academica West for Ogden Preparatory Academy. Ms. Thornburg responded that she does the performance evaluations of the teaching assistants, the secretarial staff, and teachers and then her Board evaluates her. Ms. Deem said that Ms. Thornburg brings the hiring and firing issues to the Board for approval. Academica West just facilitates the payroll and the benefits. Board member Anne Peterson said that this responsibility of Academica West should be identified in the school charter, by amendment if necessary.

State Charter School Board members and Ogden Preparatory Academy representatives discussed the desire to convert from Ogden City School District to the State Charter School Board. Member Eric Smith asked if Ogden City School District would be agreeable to provide contracted services. Ms. Deem said that Ogden Preparatory Academy has standard agreements and a very amenable work relationship with Ogden City School District, and that Ogden City School District has no objections to the conversion.

A motion was made by Member David Moss and seconded by Member Eric Smith to approve the application for conversion for Ogden Preparatory Academy. The motion carried unanimously.

6. Charter Agreement Discussion

Chairman Allen indicated that at the State Charter School Board's previous meeting it received some information about its charter agreement and some possible suggestions. The State Charter School Board invited representatives from the Utah Attorney General's Office (AG) to make a presentation on

the charter agreement so the State Charter School Board can look at that information and refine it for the January State Charter School Board meeting.

William Evans, Assistant Attorney General, Utah Attorney General's Office, introduced himself and also introduced Richard Evans, a private attorney specializing in corporate matters. William Evans then said they would respond to questions from State Charter School Board members.

State Charter School Board members said that procurement requirements have been a concern. A lengthy discussion followed with concerns over when the procurement code goes into effect, 501(c)(3)'s, agreements contingent upon receiving a charter, the procurement process involving the purchase of a physical facility and as part of a management company's package offer the charter applicants a building,

William Evans indicated that before a school is chartered, it is on its own. Once it is chartered, the school becomes part of the public school system and is a public entity for most purposes and the procurement code then would apply to it. The procurement code gives public agencies the power and the responsibility to make its own rules consistent with the procurement code and applies to a charter school as it applies to other public entities.

Chairman Allen asked William Evans if each charter school becomes its own procurement entity. William Evans said he thought so.

Chairman Allen asked what oversight the State Charter School Board should have in the process. Williams Evans indicated that it would depend on the State Charter School Board's wisdom and concern as the State Charter School Board experiences things, but suggested that the State Charter School Board does not want to wait for a problem to emerge and then fix it each time. He further suggested that if the State Charter School Board had authority to make rules or include guidelines in the charter it would provide some of the expectations that schools need to follow.

Mr. Broberg indicated that every school should have policies and procedures for purchasing procurement. An auditor will look at expenditures and a school's policy and line them up with the procurement code and accounting practices.

Richard Evans made a recommendation that could simplify the procurement process and charter school status if the charter applicant demonstrated that it has run the gauntlet and passed the test of the IRS to be a 501(c)(3). The huge body of federal law of 501(c)(3) organizations would protect public funds. Then many issues would be clearer. Richard Evans said that originally it was not a requirement that a charter school be a 501(c)(3) and asked if there is anything now in law to make that requirement.

He further recommended that the State Charter School Board could request that applicants bring their determination letters from the IRS that indicate that they passed their rules and then the State Charter School Board would know that the applicant has met a certain higher standard.

Chairman Allen asked if it might be best if the State Charter School Board requires charter organizations to be 501(c)(3)s. Richard Evans said that would be his recommendation.

State Charter School Board members and Richard Evans discussed the advantages and difficulties of requiring charter schools to have 501(c)(3) status and when the requirement should/could be imposed and concluded that the application process could be legitimately streamlined because there is a legitimate distinction between what has already been required.

Chairman Allen said that the discussion helps to solve some of the other questions the State Charter School Board had on procurement issues.

Richard Evans said State Charter School Board members should really look hard at the issue. The standards are high for (501(c)(3) entities.

Carol Lear expressed appreciation to both William Evans and the Attorney General's Office and Richard Evans for their speedy response. Chairman Allen also expressed appreciation on behalf of the State Charter School Board. William Evans and Richard Evans said that if additional questions arise, State Charter School Board members could feel free to e-mail them.

7. Utah Foundation Study – Revised Proposal

Chairman Allen indicated that at the State Charter School Board's last meeting, there was a brief presentation on the timing and costs of the Utah Foundation Study on the fiscal status and challenges of charter schools. He indicated that Steve Kroes from the Utah Foundation had reevaluated the costs and agreed to look at donating some time and resources. He directed State Charter School Board members to the revised proposal and requested Mr. Kroes to discuss the issue.

Mr. Kroes said that the Utah Foundation feels that the study is an important issue for Utah so the Foundation has re-evaluated the costs. Mr. Kroes presented the costs information contained within the revised proposal. Following his presentation of the costs for the study, Member Anne Peterson said that Patricia Bradley encouraged the State Charter School Board to pursue this study and identified some items from the 2003 study including the possibility of bonding. Member Anne Peterson requested that Mr. Broberg review the seven issues identified to determine if they are valid issues. Ray Timothy stated that the State Charter School Board also has the charge for the annual oversight of academic performance of charter schools. He said that he would like to see that component added to this study, and could help provide additional funding to include that.

Mr. Kroes indicated he would like to focus on the finance concerns of charter schools and if the request is broader, the study could end up shallower. Additionally, he said he may not be able to finish the study in the timeline with the staff that he has at his disposal.

Ray Timothy suggested that perhaps the academic performance of charter schools needs to be a separate study. He would like to see how our charter schools in Utah are actually doing. The State Charter School Board will look into that possibility.

A motion was made by Member Eric Smith and seconded by Member Barbara Killpack to approve the Utah Foundation Study - Revised Proposal. The motion carried unanimously.

8. Legislative Issues

Item #1: Clarification of the State Charter School Board as the "Charter Authorizer"

Chairman Allen said that in the law, the State Charter School Board is referred to as several different things including "sponsor" and "authorizer." He is suggesting that the State Charter School Board officially be called the Charter Authorizer within the law because that seems to be the national standard and best describes the State Charter School Board's role.

Carol Lear asked Chairman Allen if the State Charter School Board has reviewed any of the legislative issues with Dr. Harrington.

Chairman Allen said that Dr. Harrington has received a copy and was also at his presentation to the Legislature. He said that he and Dr. Harrington have talked about a lot of these legislative issues and that the State Charter School Board may wish to change some of this based on discussion and input as it goes through the process.

Item #2: Charter Remediation and Termination Powers

Chairman Allen indicated that state law does not provide for remediation of charter schools. Following discussion on the issue, the State Charter School Board decided to propose legislation that will give it the power to remediate schools that are struggling. Proposed legislation will also include language authorizing the State Charter School Board to work with the State Board of Education to make rules regarding remediation. It was determined that by having specific standards and procedures in rule, the State Charter School Board would allow itself more flexibility in making changes if necessary.

Chairman Allen said that state law provides a process for creating a charter, but does not provide a process for terminating a charter. Following discussion, the State Charter School Board decided that it will suggest legislation that will provide a process for termination of a charter that includes language regarding the appeal process on par with the existing language that provides a process for creating a charter.

Item #3: Asset Ownership/Procurement Clarifications

Chairman Allen indicated that because of earlier discussion concerning procurement and entities with 501(c)(3)s, the State Charter School Board can address the concern of asset ownership/procurement clarifications through administrative rule. Item #3 was removed from the proposed legislative issues list.

Item #4: Administrative Funding for Charter Schools

The State Charter School Board discussed the need to reevaluate how additional administrative funding is being calculated for charter schools. Many concerns were raised about equity and a possible solution. Chairman Allen indicated that he will be working with Patrick Ogden, Associate Superintendent, USOE and Patty Murphy, School Finance, USOE to craft a solution. It was suggested that there may need to be a new or separate formula specific to charter schools. Because of the concern over Item #4, Chairman Allen suggested approaching the Legislature even though there was not a solution proposed. State Charter School Board members decided that they would like to see the issue worked on with the State Office of Education and then at the January State Charter School Board meeting before making a decision.

Item #5: Application Process

Chairman Allen identified two issues within the application process to be addressed: 1) removing the 60 day requirement for the State Charter School Board to act on an application, and 2) removing the cap on the number of charter schools that could be approved annually.

There was a lengthy discussion regarding removing the cap. Some State Charter School Board members expressed concerns with too many applications if the cap is removed. There are symbolic reasons not to and good practical reasons to eliminate the cap. Vic Arnold, UEA, was asked to respond as was Janene Bowen, representing Jordan School District. Carolyn Sharette, Charter School Association, spoke against having a cap. Both Chairman Allen and Member Eric Smith said that they had pressure from legislators when the total number of schools were not approved.

Chairman Allen said that appropriate gatekeeping, could accomplish what a cap has. State Charter School Board members discussed the process of approving charter schools and talked about limiting the State Charter School Board approval of applications to three per month. There was more extensive discussion of fairness and symbolism in maintaining the cap and deadlines in the charter school approval process and whether to ask for legislative approval.

The State Charter School Board continued the discussion regarding staff workload, fairness, and

timelines of charter school approval process.

State Charter School Board members discussed the possibility of using State Board rules to incorporate many discussion items. A desire for a rubric that would help to distinguish the charter school applications was expressed by Janene Bowen.

Following a lengthy discussion, the State Charter School Board decided to recommend removing the cap on the number of charter schools that can be authorized and removing the 60 day time frame for the application approval process by the State Charter School Board. The State Charter School Board will continue to work on ways to help streamline the approval process.

Item #6: Staffing Enhancements

Chairman Allen indicated that because of the growing responsibilities of the State Charter School Director, he would like the Board to request \$198,000 in ongoing general fund money for two additional staff members. He indicated that he has already approached some legislators who are supportive of the request. He would also like the State Charter School Board to request an additional \$66,000 of one-time General Fund money so that staff could be hired as early as March 2005 and not have to wait until July 2005. He said that he would be asking for General Fund money from some already identified possible sources so that the Uniform School Fund will not be impacted.

Chairman Allen summarized the proposed legislative issues:

Item #1: Need to clarify that in law that the State Charter School Board will be called “charter authorizers” so there will be consistency in the law.

Item #2: Provide in state law for a remediation and dissolution process for charter schools the same way that there is an approval process. Also have a statement in the law that authorizes the State Charter School Board to establish rules for intervention strategies in schools.

Item #3: Off the list.

Item #4: Off the list.

Item #5: Remove the cap and remove the 60 day requirement.

Item #6: Staff funding.

A motion was made by Member Eric Smith and seconded by Member Barbara Killpack to approve the revised proposed legislative issues/agenda. Chairman Allen asked for further discussion.

Member Barbara Killpack thanked Chairman Allen and said that he had done an excellent job with the proposed legislative issues/agenda based on State Charter School Board member input. She also said that he had been very fair in trying to address all of the members’ concerns.

The motion carried unanimously.

9. Review of Open and Public Meetings Law

Chairman Allen introduced Carol Lear to present on open and public meetings law.

Ms. Lear stressed to State Charter School Board members that it is a public board and that members are dealing with public matters and money and need to be cautious of when meetings are closed. She indicated that the purposes for closed meetings are identified very narrowly, very specifically in statute but the most common purpose is to discuss the character and competence of an individual. She

suggested that the State Charter School Board acquaint itself with how to close a meeting.

Ms. Lear talked to the State Charter School Board about the problems with electronic voting because it is not a process that the public can participate in. She indicated that the State Charter School Board cannot make policy decisions by electronic vote, but that there may be occasions when State Charter School Board members can participate by telephone or other technology.

Chairman Allen acknowledged that the State Charter School Board should keep within the spirit of allowing public discourse.

Ms. Lear indicated that the penalty for violation of the Open and Public Meeting law could result in the State Charter School Board's actions being voided.

Chairman Allen asked if things such as changing meeting dates and determining agenda items could be done outside of a public meeting. Ms. Lear indicated that would be fine, and the law does establish what Boards need to do to change meeting dates.

Ms. Lear further indicated that e-mail about charter school business that is exchanged among State Charter School Board members or other staff would be accessible to anyone under the Government Records Access and Management Act (GRAMA) and suggested that when State Charter School Board members exchange e-mail to keep that in mind. She suggested that e-mail should be appropriately respectful and that State Charter School Board members should be cognizant of the fact that the information could be read by somebody. She urged the State Charter School Board to read the information she provided and think of themselves as a public body.

Mr. Broberg asked if State Charter School Board members should be concerned in getting together socially as a group and discussing charter school issues.

Ms. Lear indicated that chance or social meetings are not considered public meetings and State Charter School Board members may discuss general charter school issues. The State Charter School Board should not, however, discuss privately issues that will result in policy decisions. Much of the Open and Public Meetings law requirements are self-policing and a matter of professional responsibility and ethics. Ms. Lear also stressed the importance of confidentiality of closed meetings issues. There is no penalty in law for taking information outside of a closed meeting, but State Charter School Board members have made a commitment to those they work with and may put themselves at risk personally for a slander or defamation action.

10. Other Items

Associate Superintendent Ray Timothy provided a draft Utah State Board of Education Charter School Board Executive Summary Report to State Charter School Board members. The purpose of the report is to simplify the process for recommendation of charters to the State Board of Education.

Associate Superintendent Timothy suggested that the State Charter School Board review the draft report for changes and suggestions and that the item be placed on the January State Charter School Board agenda.

Mr. Broberg made one final comment on his appreciation of the State Charter School Board's confidence in him and his excitement to work with the State Charter School Board.

A motion was made by Member Barbara Killpack to adjourn. The motion was carried unanimously.

The meeting was adjourned at 1:05 p.m.